TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 160.

GREER COUNTY, OKLAHOMA TERRITORY, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED DECEMBER 24, 1904.

(19,171.)

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a

GREER COUNTY ET AL.
vs.
THE STATE OF TEXAS. } No. 2901.

1 *Caption.*

THE STATE OF TEXAS, }
County of Travis. }

At a term of the district court of the 26th judicial district of Texas, begun and holden at Austin, within and for the county of Travis, before the Honorable R. E. Brooks, and ending on the 2nd day of May, A. D., 1901, the following case came on for trial, to-wit:

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

Plaintiff's Second Amended Original Petition,

Filed December 18th, 1900.

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

Now comes The State of Texas, plaintiff herein, by T. S. Smith, attorney general, and by leave of the court, first had and obtained, files this her second amended original petition in substitution of her first amended original petition filed herein on May 25th, 1900, and making additional parties herein, and for such amended petition, plaintiff says as follows:

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. }

2 The State of Texas, herein styled plaintiff, through her attorney general, T. S. Smith, complaining of Greer County and of Mrs. Flora Cameron, Wm. Cameron, Fred McDonald and R. H. Downman, executors of the last will of Wm. Cameron, deceased, and of the said Mrs. Flora Cameron and Wm. Cameron, who are sued

herein as well in their individual capacities, Mrs. Sadie McDonald, with whom is joined herein her husband Fred McDonald, in his individual capacity, Mrs. Annie Downman, with whom is joined herein her husband R. H. Downman, in his individual capacity, Miss Flora Cameron and Miss Maggie Cameron, all of whom are hereinafter styled defendants, respectfully showeth:

That the defendant Greer County is an organized county in the Territory of Oklahoma, one of the Territories of the United States. That all of the other defendants reside in McLennan county, in the State of Texas.

Plaintiff represents that in the original petition in this cause Greer County and Wm. Cameron were defendants. That pending said suit, towit: on the 6th day of February, 1899, the said Wm. Cameron died, and that thereupon the cause was dismissed as to him, his heirs and legal representatives, without prejudice to the rights of the State of Texas to again implead his heirs and legal representatives herein.

That said Wm. Cameron left a will which was duly admitted to probate and record in McLennan county, Texas, and that by the terms thereof, the defendants Mrs. Flora Cameron, Wm. Cameron, Fred Donald and R. H. Downman were appointed independent executors, with authority to administer said estate independently of the jurisdiction and control of the probate court, and duly qualified and are now acting as such, and that they, together with the defendants, Mrs. Sadie McDonald, Mrs. Annie Downman, Miss Flora Cameron and Miss Maggie Cameron, are the heirs at law of the deceased, Wm. Cameron, and legatees and devisees of his estate under his will aforesaid, and as such are in possession of his estate, and claim title to the lands hereinafter described.

Plaintiff represents that on, towit: the first day of January, 1898, the plaintiff being the owner thereof, was lawfully seized and
3 possessed of the tracts of land hereinafter described, holding the same in fee simple, and that the defendants, Greer County and Wm. Cameron, on said date, unlawfully entered upon said premises and ejected the plaintiff therefrom.

That the defendant Greer County, from the date of its unlawful entry upon said premises, as aforesaid, to the present time, and said Wm. Cameron from said date to the time of his death, and the other defendants named herein as his heirs and legal representatives of Wm. Cameron, and devisees under his will, since his death to the present time have withheld and now withhold possession of said lands and premises from plaintiff, to the damage of plaintiff $5,000.00.

Plaintiff represents that said lands so entered upon and withheld, are described as follows:

One league of land situated and described as follows: In Cochran county, Texas, known as league No. 86, about 12½ miles N. 60 E. from the center of the county. By virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, chapter 85, General

Laws of 1883. Beginning at a mound three feet high at the N. E. corner of league No. 85; thence W. 5000 varas to a corner; thence N. 5000 varas to a point; thence E. 5000 varas to a mound three feet high and eight feet in dia.; thence S. 5000 varas to the place of beginning.

Eleven million, six hundred and forty five thousand, four hundred and fifty one (11,645,451) square varas of land, situated and described as follows: In Cochran county, Texas, being a part of league No. 85, about 11½ miles N. 67 E. from the center of the county. By virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, chapter 55, General Laws of 1883. Beginning at the N. W. corner of a survey for Shackelford county, a stake; thence 2329 1-10 varas to the N. W. corner of league No. 85; thence E. 5000 varas to a mound three feet high and eight feet in dia., the N. E. corner of league No. 85; thence S. 2329 1-10 varas to a stake, the N. E. corner of said Shackelford County school land survey; thence west with the N. line of said survey 5000
4 varas to the beginning.

One league of land situated and described as follows: In Cochran county, Texas, known as league No. 87, about 14 miles N. 49 E. from the center of the county, by virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, General Laws of 1883, chapter 55. Beginning at a mound three feet high, the N. E. corner of league No. 86; thence W. 5000 varas to the N. W. corner of league No. 86; thence N. 5000 varas to a mound three feet high and eight feet in dia.; thence E. 5000 varas to a mound three feet high and eight feet in dia.; thence S. 5000 varas to the beginning.

One league of land situated and described as follows: In Hockley county, Texas known as league No. 88, about 16 miles N. 42 E. from the center of the county. By virtue of an act of the legislature of of State of Texas, approved April 7th, 1883, chapter 55, General Laws of 1883. Beginning at a mound 20 feet in dia., the S. W. corner of league No. 701; thence W. 5000 varas to an earth mound three feet high and eight feet in dia., for the N. W. corner of league No. 87; thence N. 5000 varas to a mound three feet high and eight feet in dia., for corner; thence E. 5000 varas to a mound in dry basis, from which the spring on west bank of Silver lake bears N. 7230 E., 2582 varas; thence S. 5000 varas to the beginning.

Thirteen million, three hundred and fifty four thousand, five hundred and forty nine (13,354,549) square varas of land, situated and described as follows: In Cochran county, Texas, being a part of league No. 109, about 17½ miles N. 39 E. from the center of the county. By virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, chapter 55, General Laws of 1883. Beginning at a rock and dirt mound, the N. W. corner of league No. 88; thence N. 1929 varas, passing a large rock hill, the N. E. corner of league No. 105, at 2670 9-10 vrs. a stake for corner; thence E. 5000 varas a stake for corner; thence S. 2670 9-10 varas, a mound three

feet high and flat rock on top in dry basin, from whence the spring on west bank of Silver lake brs. N. 7230 E. 2582 varas;
5 thence W. 5000 varas to the beginning.

That the use and occupation of said land- during the time they were and are so unlawfully withheld from plaintiff, and used and occupied by the defendants, and by the said Wm. Cameron, are reasonably worth the sum of $1000 per annum, for which the defendants are liable to plaintiff.

Plaintiff represents that the defendants claim title to said land under and by virtue of certain patents issued by L. S. Ross, governor of the State of Texas, to Greer county, (Texas) dated July 18th, 1887, the said Greer county (Texas) comprising the same territory as is embraced in the defendant Greer County, Oklahoma Territory, which said Greer county, Texas, had been attempted to be organized under the provisions of the general laws of the State of Texas, as a county of Texas, the territory thereof being without the limits of the said State of Texas and within the limits of the present Territory of Oklahoma, one of the Territories of the United States.

That said patents and each of them were issued without legal authority, and are null and void, and plaintiff prays that the same be cancelled, set aside and held for naught.

Plaintiff therefore sues, and the defendants having appeared and filed answer herein, on final hearing, plaintiff prays judgment against all of the defendants for the title and possession of the lands hereinabove described, and her rents and damages as herein aforesaid, for execution and writ of possession, and plaintiff prays for such other and further relief, both in law and in equity, as she may be entitled to, and for general relief. And the defendants and each of them are herein notified to produce upon the trial of this cause the original patents issued by L. S. Ross, as governor, as aforesaid, for the lands aforesaid, and the original deeds in their chain of title thereto.

T. S. SMITH,
Attorney General, and
T. S. REESE,
Assistant Attorney General,
Attorneys for Plaintiff.

6 (Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Plaintiff's second amended original petition. Filed Dec. 18, 1900. Jas. P. Hart, clerk.

Answer of Defendant Greer County.

Filed December 18th, 1900.

In the District Court, 26th Judicial District, at Austin.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

In this cause comes Greer County, one of the defendants herein and answering plaintiff's first amended original petition herein filed on towit: May 25th, 1900, pleads as follows:

1. This defendant demurs to plaintiff's petition, and says that the allegations and averments therein contained are not sufficient in law to entitle plaintiff to have and maintain this action; and of this defendant prays judgment of the court.

2. And for a special demurrer to plaintiff's said first amended original petition this defendant says that the allegation of plaintiff in said petition that the patents issued by L. S. Ross, governor of the State of Texas, to this defendant, Greer County, dated July 18, 1887, were issued without legal authority and are null and void, and plaintiff prays that the same be cancelled, set aside and held for naught, is totally insufficient in law for that said petition fails to disclose by appropriate and proper averment how and in what manner said patents are null and void and why the same were issued without legal authority. Said allegation is a mere conclusion of the pleader without a statement of any facts by which the court would be able to determine from the allegations of the petition whether or not said patents were issued without legal authority and are null and void, as claimed by plaintiff. And of this the defendant, Greer County, prays judgment of the court.

7 3. This defendant, Greer County, here now disclaims all right, title or interest in and to all the lands sued for by plaintiff in this action, except the following: 7236 acres of land off the north end of the Greer County school land leagues, consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres, and the balance of said 7236 acres off the north side of league No. 87 as follows: Beginning at the N. E. corner of said league No. 87; thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning, situated in Hockley and Cochran counties, Texas.

4. Further answering this defendant, Greer County, answers and says that it is not guilty of the wrongs, injuries and trespasses complained of in plaintiff's petition, and it denies all and singular the

allegations of plaintiff in said amended petition, and of this puts itself upon the country.

5. And for a further answer to plaintiff's said first amended original petition, the defendant, Greer County, comes and shows to the court that it is a body politic and corporate, duly created and organized as such and was such body politic and corporate on towit: the 18th day of July, 1887, and for many years prior thereto and is now such body politic and corporate. This defendant further avers that the patents issued to this defendant on towit: July 18th, 1887, were in all respects valid and legal patents and were issued in conformity to the authority and direction of the law-making department of the State of Texas, towit; by virtue of divers and sundry acts of the legislature of the State of Texas, and upon the issuance and delivery of said patents a full fee simple title to the lands described in plaintiff's petition was vested in this defendant, Greer County, by the terms of said patents. This defendant further says that said patents so issued, as aforesaid to this defendant, were issued by the plaintiff, The State of Texas, with full knowledge of the rights of this defendant to said
8 land; that this defendant at the time of the issuance of said patents was entitled to the amount of land therein embraced under the laws of the State of Texas; that it accepted said patents in good faith, as it had a right to do under and by virtue of the laws of the State of Texas; and that it now holds the same as a corporate entity in good faith, and so held the same at the time this suit was instituted. This defendant further avers that it has done no act, either of omission or commission, since the issuance of said patents, whereby any rights of forfeiture have accrued to the plaintiff herein, The State of Texas; that it received said lands for the purpose of public education and the maintenance of a system of public free education, and that under the constitution and the laws of Texas, under which said lands were donated to this defendant it, this defendant, Greer County, became the owner by full title of said lands and had the right of free and unlimited disposition thereof.

This defendant, Greer County, shows to the court that at and before the issuance of said patents and subsequent thereto, the plaintiff herein, The State of Texas, claimed that the territory and lands embraced within the geographical limits of this defendant was a part and parcel of the State of Texas, notwithstanding the fact that long prior to the year 1860 and continuously thereafter down to the present time said lands and domain embraced within the limits of defendant were claimed by the United States of America. This defendant shows that by virture of a law of the Congress of the United States of America, towit, about the year 1890, a suit in equity was instituted in the Supreme Court of the United States at the city of Washington against the State of Texas, styled "The United States *vs.* The State of Texas," which suit thereafter was duly brought to trial, towit: in the year 1895, and it was ordered, adjudged and decreed by said court in said suit, said court then and there having

full jurisdiction both of the subject matter and of the parties, that said lands embraced within the geographical limits of this
9 defendant did not belong to the State of Texas, but were of right the property of The United States of America, the plaintiff in said suit, and thereupon, towit: on the — day of ——, 189–, the plaintiff herein, through its proper legislative department did authorize and direct the attorney general of said State of Texas to institute and prosecute this suit for the purpose of canceling said patents and of recovering the lands therein granted to this defendant, and this suit has been instituted, as this defendant is informed and believes and so avers, by virture of said legislative action of the plaintiff State.

This defendant, Greer County, avers that if the fact as to the ownership of the lands embraced within its geographical limits of this defendant was unknown to plaintiff, it was equally unknown to defendant, and plaintiff had an equal or superior information or means of knowledge as to such ownership as to that possessed by defendant; or if the fact of ownership was doubtful from its own nature, which is not admitted by this defendant, then this defendant says that it acted in this transaction throughout in good faith, and it denies that a court of equity can interfere in behalf of plaintiff as sought in this action. This defendant further avers that it practiced no deceit or fraud upon plaintiff in obtaining said lands and that the plaintiff is estopped by her own action to deny the right and title to this defendant in and to the lands sued for, in that this defendant, at the instance of plaintiff accepted said lands in good faith, and has administered the same and applied the same, or their proceeds, to the purposes for which the donations were made and it would be contrary to equity and wholly unjust for plaintiff now to attempt to undo its acts in the premises by reason of its own mistake.

This defendant, Greer County, further avers that the plaintiff is charged in law and in equity with full knowledge at the time of the issuance of said patents and the grant of said lands to this defendant, that the lands lying within the geographical limits of this defendant did not belong to plaintiff, but were part and parcel of the public lands of the United States of America. And this defendant
10 further avers that if the right and title to said lands lying within the geographical limits of this defendant were in dispute, such fact, long anterior to the issuance of said patents and the donation of said lands was well known to the plaintiff as well as to the executive and legislative departments of the plaintiff, The State of Texas, and that in making said grants to this defendant, it, the plaintiff, acted with full knowledge and information that said lands and geographical limits might not be part and parcel of the State of Texas.

Wherefore this defendant says that this suit on behalf of plaintiff to cancel the patents, as set forth in plaintiff's petition and to recover the lands therein is violative of the Constitution of the United

States in this, that it is an attempt on the part of the State of Texas through her executive, legislative and judicial departments to impair the obligations of the contract solemnly entered into between the plaintiff and the defendant; and it is further violative of the Constitution of the United States in this, that this suit is an attempt upon the part of the State of Texas through all its departments, executive, legislative and judicial to take the private property of this defendant for public use without just compensation paid therefor; and all this the defendant stands ready to verify.

6. Wherefore this defendant comes and prays the court that plaintiff take nothing by its suit and that this defendant have and recover its judgment or decree over against the plaintiff quieting the title of this defendant to the lands and premises herein sued for. Defendant further prays that it have and recover its costs against the plaintiff, and for such other and further relief, to which it may show itself entitled.

CLARK & BOLINGER,
H. N. ATKINSON,
Att'ys for Greer County, Defendant.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Answer of defendant Greer County. Filed Dec. 18, 1900. Jas. P. Hart, clerk.

11 *Plaintiff's First Supplemental Petition.*

Filed December 18th, 1900.

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

Now comes the State of Texas by T. S. Smith, attorney general, and files this her first supplemental petition by way of answer to the first amended original answer of the defendant, Greer County, and also to the first amended original answer of the defendants, the heirs and executors of William Cameron, deceased, and plaintiff demurs and excepts to so much of said amended answers as sets up in defense of plaintiff's right to recover, that the State of Texas is estopped by her action as set up in said amended answers, from suing for and recovering the land herein sued for; and plaintiff says that the facts set up in said amended answers, by way of estoppel, are insufficient in law, and do not constitute an estoppel upon the plaintiff, and of this she prays the judgment of the court.

And plaintiff further specially excepts to so much of the first amended original answer of the defendants, the heirs and executors

of William Cameron, deceased, as sets up that the said Wm. Cameron was, or that Strain & Swinburne were innocent purchasers for value without notice, of the lands sued for herein, and claimed by the defendant, the heirs and executors of William Cameron, deceased; and the plaintiff says that the facts set up in said first amended original answer, as a basis for said plea of innocent purchaser without notice on the part of the said William Cameron, are insufficient in law, and of this she prays the judgment of the court.

And plaintiff further specially excepts to so much of the first amended original answers of all of the said defendants, as pleads in reconvention in this suit the title of said defendants, and as
12 prays a judgment in this court against plaintiff quieting their title to said lands.

Plaintiff says that she sues herein as a sovereign State, and that the defendants are not entitled, by way of pleading in reconvention, to an affirmative judgment against the State quieting their title to the lands sued for, or for any other affirmative relief, save and except for costs, in case the State should fail in her said suit, and of this plaintiff prays the judgment of the court.

T. S. SMITH,
Attorney General, and
T. S. REESE,
Assistant Attorney General,
Attorneys for Plaintiff.

(Endorsed:) No. 16,142. The State of Texas, *vs.* Greer County *et al.* Plaintiff's first supplemental petition. Filed Dec. 18th, 1900. Jas. P. Hart, clerk.

Findings of Fact & Conclusions of Law by the Court.

Filed May 2nd, 1901.

THE STATE OF TEXAS *vs.* GREER COUNTY ET AL. } Cause Tried in the District Court, 26th Judicial District.

Conclusions of fact found by the court upon a trial of the cause against Greer county, there having been a severance upon the trial.

In this cause, originally instituted against Greer county, Oklahoma Territory, and the heirs, devisees and executors of Wm. Cameron, deceased, Greer county disclaimed as to all the land sued for except 7236 acres, described in its amended answer, and the executors, heirs and devisees of Wm. Cameron, deceased, dis-
13 claimed as to the 7236 acres, claiming the balance, 10,476 acres. Upon the trial there was, by agreement, a severance as between Greer county on the one part, and the heirs and devisees

and executors of Wm. Cameron, deceased, on the other. The cause as to Greer county was tried upon an agreed statement of facts, which I have adopted as my conclusions of fact in said cause, as follows:

In this case for the purpose of a trial, the following statement of facts is agreed upon by the parties:

I.

The land sued for comprises four leagues in Hockley and Cochran counties, and was granted to Greer county, as an organized county of the State of Texas, under the provision of the general laws of the State granting four leagues of land to each county of the State for school purposes.

II.

Patents (five in number) issued to Greer county July 18th, 1887, being Nos. 519, 520, 521, 522 and 523, vol. 24. The original or certified copies of such patents may be introduced in evidence by either party, and for any purpose deemed advisable.

III.

7236 acres of said land *is* now claimed by Greer county, Oklahoma Territory, under and by virtue of said patents to Greer county, Texas; said 7236 acres *is* described as follows: 7236 acres of land off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres, and the balance of said 7236 acres off the north side of league No. 87, as follows: Beginning at the N. E. corner of said league No. 87, thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning, situated in Hockley and Cochran counties, Texas.

IV.

The balance of said four leagues is claimed by the heirs and devisees of Wm. Cameron, deceased, under and by virtue of a
14 certain deed of conveyance thereof to Wm. Cameron from Strain & Swinburne, dated January 17th, 1888. Strain & Swinburne claimed title thereto under and by virtue of a deed of conveyance to them, from and on the part of Greer county, Texas, by the county judge of said Greer county, Texas, dated January 12th, 1888. The land referred to is described as follows:

10,476 acres of land off the south end of the Greer County school land leagues as follows: Beginning at the S. E. corner of that portion of league No. 85, which is patented to Greer county by patent No. 520, vol. 24; thence N. at 2329½ varas the N. E. corner of said

league No. 85, at 7329½ varas the N. E. corner of league No. 86, at 11829 45/100 varas a point on the east line of league No. 87; thence W. 5000 varas; thence south 11829 45/100 varas; thence east 5000 varas to the place of beginning, so as to include all that part of league No. 85 that is patented to Greer county,—all of league No. 86, and the balance of the 11,476 acres out of the south side of league No. 87, situated in Hockley and Cochran counties, Texas.

V.

The defendant Greer County is now an organized county of Oklahoma Territory, one of the Territories of the United States, and comprises the same territory which was at one time organized under the laws of the State of Texas, as Greer county, Texas, to which the aforesaid four leagues of land were patented.

VI.

Wm. Cameron, the grantee in the above described deed of conveyance, died testate on the 6th day of February, 1898. By the terms of his will, which was duly probated in the probate court of McLennan county, Texas, the other defendants were made executors of his will and devisees of his estate, and are also his heirs at law, as set out in plaintiff's amended petition, and as such they claim title to the aforesaid land.

VII.

The territory now organized as Greer county, Oklahoma Territory was, up to the date hereinafter set out, claimed by the State
15 of Texas to be a part of her territory and up to said date, jurisdiction and control was claimed and exercised over the same by the State of Texas. The Government of the United States did not, except in so far as was done by the act making Greer county a part of the northern judicial district of Texas, as hereinafter shown, concede said claim, but during all of said time claimed said territory as a portion of her own territory outside of the limits of the State of Texas, and the legislative and executive departments of the said State had full knowledge of said claim prior to the issuance of the patents mentioned herein. Attempts were made from time to time to settle the dispute between the State of Texas and the United States as to the ownership of this territory, without success.

VIII.

Greer county, comprising the aforesaid territory, was created by the legislature of the State of Texas by the act of February 8th, 1860, and was organized as a county under the provisions of said act on the — day of ——, A. D. 1886.

IX.

By an act of the Congress of the United States of May 2nd, 1890, the Attorney General of the United States was directed to commence in the name and on behalf of the United States, a prosecute to final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of lands lying between the North and South forks of Red river, where the Indian Territory and the State of Texas adjoin, east of the 100th meridian of longitude, and claimed by the State of Texas as within its boundary and a part of its land, and designated on its maps as Greer county.

Under the authority of this act a suit was instituted in the Supreme Court of the United States, styled The United States *vs.* The State of Texas, in which the State of Texas appeared by her attorney general and other counsel.

16 X.

At the October term, 1895, a decree was rendered in said cause as follows:

"This cause having been submitted upon the pleadings, proofs and exhibits, and the court being fully advised, it is ordered, adjudged and decreed that the territory east of the 100th meridian of longitude, west and south of the river now known as the North fork of Red river, and north of a line following westward, as prescribed by the treaty of 1819, between the United States and Spain, the course, and along the south bank both of Red river and of the river known as the Prairie Dog Town fork or South fork of Red river, until such line meets the 100th meridian of longitude—which territory is sometimes called Greer county,—constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America. Each party will pay its own costs."

After this decree was rendered, the State of Texas exercised no further control or jurisdiction of said territory, and the same was afterwards organized into Greer county, Oklahoma Territory, and as a part of said Territory. The territory described in said decree is the same as was embraced in Greer county, Texas, as created and organized as aforesaid.

The recitals in the report of said cause of United States *vs.* Texas, as reported in the 162 volume of the United States Supreme Court Reports, and the printed record in said cause, may be used as full evidence of the facts therein stated, as to the institution of the suit, the appearance and pleadings of the parties and the decree of the court, without the necessity of producing certified copies thereof from the records of said court."

In addition to the facts agreed upon, as shown in the foregoing

statement, I find that the patents referred to in the statement, for the four leagues of land, purport on their face to have been issued by virtue of an act of the legislature of the State of Texas, approved April, 7th, 1883, chapter 55, General Laws 1883.

17 *Conclusions of Law.*

From the foregoing facts I conclude as a matter of law that the plaintiff is entitled to recover of the defendant Greer County so much of said land in controversy to which it files a disclaimer, because of such disclaimer, and is entitled to recover the balance of said land to which said defendant pleads not guilty, as is set out in the answer of said defendant, because:

(1.) It having been judicially determined by the Supreme Court of the United States in the suit between said United States and the State of Texas, involving the title to what is known as Greer county, that said Greer county is not and never was part of the State of Texas, then the act of the legislature of Texas of ——, 1860, creating said territory into Greer county, as a part of said State, was beyond the powers conferred upon said legislature by the constitution of this State and was beyond the power of the people of Texas to incorporate the same into a county of the State of Texas, either by the constitution or the act of the legislature.

(2.) Even if the act of the legislature creating Greer county was not unconstitutional nor beyond the powers of said legislature, still the act of —— —, 1883, of said legislature, under which the patents to the land in controversy were issued by the officers of the State of Texas, only authorizes the issuance of such patents to counties of *this* State which would not include Greer county, and the act of granting patents to a county whose territory was entirely beyond the bounds of the State of Texas was unauthorized and beyond the powers of the officers issuing said patents, and the fact that said officers in issuing said patents and the legislature in creating Greer county acted in good faith and in the belief that said territory was a part of the State of Texas, would not affect said acts, but the same were void and said patents are void for want of power in said officers to issue them. The lands in controversy were not issued direct by the legislature to Greer county nor to the territory then known and recognized as Greer county, Texas, but the patents for the same

18 were issued by the agents and officers of the State of Texas under a general law authorizing the issuance of such patents to each county of *this* State which never included Greer county. The constitution of this State authorized and provided for the creation of the territory of this State into counties by the legislature, and the setting apart of four leagues of land to each of said counties for free school purposes, but by implication, if it does not directly, limits the power of the legislature in granting such lands to counties of *this* State. The reasons for the statute and constitu-

tional provisions would only apply to counties which were a part of the State of Texas.

The patents being void, all parties are chargeable with notice of their invalidity and there could be no innocent purchaser of such lands.

Judgment for plaintiff for lands in controversy. To which conclusions of law and judgment the defendant Greer County in open court excepts, and gives notice of appeal to the court of civil appeals for the third supreme judicial district of Texas.

R. E. BROOKS,
District Judge.

(Endorsed:) 16,142. The State of Texas *vs.* Greer County *et al.* Findings of fact and conclusions of law by the court as to def't Greer County. Filed May 2nd, 1901. Jas. P. Hart, clerk.

Agreed Statement of Facts.

Filed December 18th, 1900.

In the District Court of Travis County, Texas, 26th Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY and Others.

In this case, for the purpose of a trial, the following statement of the facts is agreed upon by the parties:

19 I.

The land sued for comprises four leagues in Hockley and Cochran counties, and was granted to Greer county, as an organized county of the State of Texas, under the provisions of the general laws of the State granting four leagues of land to each county of the State for school purposes.

II.

Patents (five in number) issued to Greer county July 18th, 1887, being Nos. 519, 520, 521, 522 and 523, vol. 24. The original or certified copies of such patents may be introduced in evidence by either party for any purpose deemed advisable.

III.

7236 acres of said land is now claimed by Greer county, Oklahoma Territory under and by virtue of said patents to Greer county Texas; said 7236 acres is described as follows: 7236 acres of land

off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres and the balance of said 7236 acres off the north side of league No. 87, as follows: Beginning at the N. E. corner of said league No. 87; thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning, situated in Hockley and Cochran counties, Texas

IV.

The balance of said four leagues is claimed by the heirs and devisees of Wm. Cameron, deceased, under and by virtue of a certain deed of conveyance thereof to Wm. Cameron from Strain & Swinburne, dated January 17th, 1888. Strain & Swinburne claimed title thereto under and by virtue of a deed of conveyance to them from and on the part of Greer county, Texas, by the county judge of said Greer county, Texas, dated January 12th, 1888. The land referred to is described as follows:

10,476 acres of land off of the south end of Greer County school land leagues as follows: Beginning at the S. E. corner of that portion of league No. 85, which is patented to Greer county by patent No. 520, vol. 24; thence N. at 2329½ varas the N. E. corner of said league No. 85 at 7329½ varas the N. E. corner of league No. 86, at 11,829 45/100 varas a point on the east line of league No. 87; thence west 5000 varas; thence south 11,829 45/100 varas; thence east 5000 varas to the place of beginning, so as to include all that part of league No. 85 that is patented to Greer county,—all of league No. 86, and the balance of the 10,476 acres out of the south side of league No. 87, situated in Hockley and Cochran counties, Texas.

V.

The defendant Greer County is now an organized county of Oklahoma Territory, one of the Territories of the United States, and comprises the same territory which was at one time organized under the laws of the State of Texas, as Greer county, Texas, to which the aforesaid four leagues of land were patented.

VI.

Wm. Cameron, the grantee in the above described deed of conveyance, died testate on the 6th day of Feb'y. 1898. By the terms of his will, which was duly probated in the probate court of McLennan county, Texas, the other defendants were made executors of his will and devisees of his estate, and are also his heirs at law, as set out in plaintiff's amended petition, and as such they claim title to the aforesaid land.

VII.

The territory now organized as Greer county, Oklahoma Territory, was, up to the date hereinafter set out, claimed by the State of Texas to be a part of her territory and up to said date, jurisdiction and control was claimed and exercised over the same by the State of Texas. The Government of the United States did not, except in so far as was done by the act making Greer Co. a part of the northern judicial dist. of Texas, as hereinafter shown, concede said claim, but during all of said time claimed said territory as a portion of her own territory, outside of the limits of the State of Texas, and
21 the legislative and executive departments of the said State had full knowledge of said claim prior to the issuance of the patents mentioned herein. Attempts were made from time to time to settle the dispute between the State of Texas and the United States, as to the ownership of this territory, without success.

VIII.

Greer county, comprising the aforesaid territory, was created by the legislature of the State of Texas by the act of February 8th, 1860, and was organized as a county under the provisions of said act on the — day of——, A. D., 1886.

IX.

By an act of the Congress of the United States of May 2nd, 1890, the Attorney General of the United States was directed to commence in the name and on behalf of the United States, and prosecute to a final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of land lying between the North and South forks of Red river, where the Indian Territory and the State of Texas adjoin, east of the 100th degree of longitude, and claimed by the State of Texas as within its boundary and a part of its land, and designated on its maps as Greer county.

Under the authority of this act a suit was instituted in the Supreme Court of the United States, styled The United States *vs.* The State of Texas, in which the State of Texas appeared by her attorney general and other counsel.

X.

At the October term, 1895, a decree was rendered in said cause as follows:

"This cause having been submitted upon the pleadings, proofs and exhibits, and the court being fully advised, it is ordered, adjudged and decreed that the territory east of the 100th meridian of longitude, west and south of the river now known as the North fork of Red river, and north of a line following westward, as prescribed

by the treaty of 1819 between the United States and Spain,
22 the course, and along the south bank, both of Red river and of the river now known as the Prairie Dog Town fork or South fork of Red river, until such line meets the 100th meridan of longitude,—which territory is sometimes called Greer county,—constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America. Each party will pay its own costs."

After this decree was rendered, the State of Texas exercised no further control or jurisdiction of said territory, and the same was afterwards organized into Greer county, Oklahoma Territory, and as a part of said Territory. The territory described in said decree is the same as was embraced in Greer county, Texas, as created and organized as aforesaid.

The recitals in the report of said cause of The United States *vs.* Texas, as reported in the 162 volume of United States Supreme Court Reports, and the printed record in said cause may be used as full evidence of the facts therein stated, as to the institution of the suit, the appearance and pleadings of the parties and the decree of the court, without the necessity of producing certified copies thereof from the records of said court.

Any other evidence may be introduced by either party pertinent to the issues and not contradictory of the facts herein agreed upon, including any and all acts of the legislature of the State of Texas or the Congress of the United States, relating to the subject matter of this suit, including the act of Congress making Greer Co. a part of the northern district of the State of Texas.

——— ———,
Attorney General, and
T. S. REESE,
Assistant Attorney General,
Attorneys for Plaintiff.
23 L. C. ALEXANDER,
H. N. ATKINSON,
Attorneys for Defendants, the Heirs of Wm. Cameron.
H. N. ATKINSON,
Att'y for Greer Co.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer Co. *et al.* Agreed statement of facts. Filed Dec. 18, 1900. Jas. P. Hart, clerk.

Judgment, April 29th, 1901.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

On this, the 29th day of April, 1901, came on to be heard this cause, when came the parties, plaintiff and defendant by counsel and by agreement of parties made in open court;

It is ordered and adjudged that a severance be had of the cause against Greer County from that against the other defendants, to wit: the heirs and executors of Wm. Cameron, deceased, and that the said cause against Greer County be tried separate from that against the other defendants, the heirs and executors of Wm. Cameron, deceased, which is agreed to by the State and all of the defendants;

And thereupon came on to be heard the cause as against Greer County defendant alone, when came the parties by counsel, both plaintiff and defendant, and announced ready for trial, and no jury being demanded by either party, the cause was submitted to the court, and the pleadings, evidence and argument of counsel having been heard by the court and fully considered,

24 It is considered by the court that the plaintiff, The State of Texas, ought to have judgment for that portion of the land sued for and described in plaintiff's petition, and claimed by defendant Greer County, which is hereinafter more fully described;

It is therefore ordered, adjudged and decreed by the court that the plaintiff, The State of Texas, do have and recover of and from the defendant Greer County, an organized county of Oklahoma Territory, the title and possession of the following described lands, viz:

A portion of the four leagues of school lands for which patents were issued by the State of Texas to Greer county, Texas, on July 18th, 1887, that portion of said four leagues of school land for which judgment is here rendered for the State of Texas is described as follows:

Seven thousand two hundred and thirty six (7236) acres of land off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, in Cochran county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, as fully described in said patent.

Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to Greer county;

And the balance of said 7236 acres is off the north side of league No. 87, in Cochran county, Texas, patented to Greer county by the State of Texas, by patent No. 521, vol. 24, that portion of said league

No. 87 herein adjudged to the State of Texas, is fully described as follows: Beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to the beginning.

It is further ordered, adjudged and decreed by the court, that the patents whereby said lands were granted by the State of Texas to Greer county, as aforesaid, in so far as the said 7236 acres of land above described, is granted thereby, be and the same are hereby cancelled and annulled.

It is further ordered, adjudged and decreed that the plaintiff The State of Texas, do have and recover of the defendant Greer County, all costs in this behalf incurred; that is the costs incurred in the entire suit before severance, and the costs incurred in this suit against Greer County after severance; but it is expressly provided herein that the costs adjudged herein against the defendant Greer County, shall not include the cost of making the executors and heirs of Wm. Cameron, deceased, parties to this suit, nor the costs of taking depositions herein, nor any of the costs incurred after severance in the cause as against the heirs and executors of Wm. Cameron, deceased;

It is further ordered, adjudged and decreed that the plaintiff take nothing as to her claims for rents and damages, as to which defendant may go hence.

It is further ordered, adjudged and decreed that as against the aforesaid defendant, Greer County, the plaintiff do have and recover of said defendant on its disclaimer, the title and possession of all of said four leagues of Greer County school lands, described in plaintiff's petition and covered by patents Nos. 523, vol. 24; No. 521, vol. 24; No. 519, vol. 24; No. 522, vol. 24, and No. 520, vol. 24, all dated July 18th, 1887, not hereinbefore adjudged to the State of Texas by this judgment; and that plaintiff have her writs of possession and execution as often and as many as may be necessary; to which judgment of court and conclusions of law, the defendant excepts, and in open court gives notice of appeal to the court of civil appeals for the third supreme judicial district of Texas.

Petition of Greer County for Writ of Error.

Filed April 28th, 1902.

STATE OF TEXAS, }
County of Travis. }

To the Honorable James P. Hart, clerk of the district courts of Travis county, Texas:

Now comes Greer County, an organized county of the Territory of Oklahoma, and respectfully shows that in cause No. 16,142, wherein The State of Texas was plaintiff, and Greer County was defendant

(other defendants having severed) which cause was pending in said Travis county and in the 26th judicial district of Texas, on the 29th day of April, 1901, judgment was rendered in favor of the State of Texas against said Greer County for a recovery of a portion of the four leagues of school lands, for which patents were issued by the State of Texas to Greer county, Texas on July 18th, 1887, which lands were described as follows:

7,236 acres of land off the north end of the Greer County school leagues, consisting of the south part of league No. 109 in Cochran, county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 sq. varas of land, as fully described in said patent. Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to said Greer county, and the balance of said 7,236 acres is off the north side of league No. 87 in Cochran county, Texas, patented to Greer county by the State of Texas, by patent No. 521, vol. 24; that portion of said league No. 87 herein adjudged to the State of Texas, is fully described as follows:

Beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to beginning, which judgment also cancelled the patents to said land, and adjudged costs against Greer County as therein set forth, and which judgment also awarded to the State of Texas on the disclaimer of said Greer County, all the other lands pat-
27 ented by the State of Texas to said Greer County on the 18th day of July, 1887, with writ of possession and execution.

Your petitioner respectfully shows that in and about the rendition of said judgment, certain errors were committed, and it desires to remove this cause to the court of civil appeals for the third supreme judicial district of Texas for revision and correction. Petitioner further shows that Hon. C. K. Bell, who resides in Austin, Texas, is the attorney general of the State of Texas, upon whom service of citation in error may be made.

Your petitioner files herewith a bond for costs, secured, conditioned and payable as the law directs, and prays that citation in error issue, and it further prays for general relief.

CLARK & BOLINGER,
H. N. ATKINSON,
Attorneys for Petitioner.

(Endorsed:) No. 16,142, The State of Texas *vs.* Greer County *et al.* Petition of Greer Co. for writ of error. Filed Ap'l 28th, 1902. Jas. P. Hart, clerk.

Writ of Error Bond.

Filed April 28th, 1902.

THE STATE OF TEXAS } No. 16142. Cause Pending in the 26th
vs. } Judicial District Court, Travis County,
GREER COUNTY ET AL. } Texas.

Whereas, in the above entitled and numbered cause, on the 29th day of April, 1901, judgment was rendered in favor of the State of Texas against said Greer County for a recovery of a portion of the four leagues of school lands, for which patents were issued by the State of Texas to Greer county, Texas, on July 18th, 1887, which lands were described as follows:

7,236 acres of land off the north end of the said Greer County
28 school leagues, consisting of the south part of league No. 109 in Cochran county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, as described in said patent. Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to said Greer county, and the balance of said 7236 acres is off the north side of league No. 87 in Cochran county, Texas, patented to Greer county by the State of Texas, by patent No. 521, vol. 24; that portion of said league No. 87 herein adjudged to the State of Texas is fully described as follows:

Beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to beginning, which judgment also cancelled the patents to said land, and adjudged costs against Greer County, as therein set forth, and which judgment also awarded to the State of Texas on the disclaimer of said Greer County, all the other lands patented by the State of Texas to said Greer county on the 18th day of July, 1887, with writ of possession and execution.

And whereas, the said Greer County, defendant, is desirous of removing said cause to the court of civil appeals for the third supreme judicial district of Texas for revision and correction.

Now, therefore, we Greer County, Oklahoma, as principal and —— —— and —— —— as sureties, acknowledge ourselves to be indebted to the State of Texas in the sum of $300.00 being double the amount fixed by the clerk of said district court, as probable costs of the district court, the court of civil appeals and the supreme court, conditioned that the said Greer County, Oklahoma, plaintiff in error herein, shall prosecute its writ of error with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in the court of civil appeals and the supreme court.

In witness whereof, we have hereto set our hands at Waco,
29 Texas, this 26th day of April, 1902.

GREER COUNTY, OKLAHOMA,
Per H. N. ATKINSON, *Att'y.*
H. N. ATKINSON,
GEO. CLARK,
D. C. BOLINGER, *Sureties.*

Approved Ap'l 28, 1902.
JAS. P. HART, *Clerk.*

THE STATE OF TEXAS, }
County of McLennan, }

I, R. V. McClain, clerk of the district court in and for said county do hereby certify that H. N. Atkinson, Geo. Clark and D. C. Bolinger, whose names appear signed to the annexed bond, are in my opinion good and ample security for the amount therein specified. That they have property in said county subject to execution of a larger amount, and that if said bond was offered to me for approval the same would be accepted and approved.

To certify which I hereunto set my hand and impress of my official seal at office in the city of Waco, on the 26 day of April, 1902.

[SEAL.]

R. V. McCLAIN,
Clerk District Court, McLennan County,
By CHAS. E. MOORE, *Deputy.*

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Writ of error bond. Filed Ap'l 28, 1902. Jas. P. Hart, clerk.

Citation in Error to the State of Texas.

Issued April 30th, 1902.

The State of Texas to the sheriff or any constable of Travis county, Greeting:

Whereas, in a certain cause pending in the district court of Travis county, Texas, in and for the 26th judicial district of Texas,
30 No. 16,142, on the docket thereof, wherein The State of Texas is plaintiff and Greer County *et al.* are defendants, a judgment was rendered on the 29th day of April, 1901, in favor of the State of Texas against said Greer County, for the recovery of a portion of four leagues of school land for which patents were issued by the State of Texas to Greer county, Texas, on July 18th, 1887, which lands were described as follows:

7,236 acres of land off the north end of the Greer County school

leagues, consisting of the south part of league No. 109, in Cochran county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 sq. varas of land as fully described in said patent. Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to said Greer county, and the balance of said 7,236 acres is off the north side of league No. 87 in Cochran county, Texas, patented to Greer county by the State of Texas by patent No. 521, vol. 24; that portion of said league No. 87 herein adjudged to the State of Texas is fully described as follows: beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to beginning, which judgment also cancelled the patents to said land, and adjudged costs against Greer County as therein set forth, and which judgment also awarded to the State of Texas on the disclaimer of said Greer County, all the other lands patented by the State of Texas to said Greer County on the 18th day of July, 1887, with writ of possession and execution:

And whereas, the defendant, Greer County, having given notice of appeal from said judgment and having filed its petition for writ of error and perfected its appeal by giving bond as required by law, bearing date April 28, 1902, which petition has been granted removing said cause to the court of civil appeals for the 3rd supreme judicial district of Texas for revision and correction:

Therefore, you are hereby commanded to summon forthwith the said The State of Texas, defendant in error, to appear before the honorable court of civil appeals for the third supreme judicial
31 district of Texas, within 60 days from date of service of this citation and defend the writ of error before said court at Austin, in the county of Travis, State of Texas.

Herein fail not, but make due return of this citation within ten days from date hereof, with your return endorsed thereon, showing how you have executed the same.

Given under my hand and seal of office, at Austin, Texas, this the 30th day of April, A. D. 1902.

[SEAL.] JAS. P. HART,
Clerk District Court, Travis County, Texas.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Citation in error to the State of Texas. Issued April 30th, 1902. Jas. P. Hart, cl'k dist. ct. T. C. Tex. Filed May 5th, 1902. Jas. P. Hart, clerk, by D. J. Pickle, deputy.

Sheriff's Return.

Came to hand on the 30th day of April, A. D. 1902, at 10 o'clock a. m. and executed on the 30th day of April, 1902, by delivering to the within named defendant in error, The State of Texas, (by deliv

ering to C. K. Bell, attorney general of the State of Texas, in person) a true copy of this writ.

J. M. DAVIS,
Sheriff Travis County, Texas,
By J. M. FOX, *Deputy.*

Fee & mileage, $1.

Assignment of Errors.

Filed June 11th, 1902.

THE STATE OF TEXAS *vs.* GREER COUNTY ET AL. } No. 16142. On Error from the District Court, 26th Judicial District.

In the above numbered and entitled cause comes the defendant, Greer County, having perfected writ of error in said cause to
32 the court of civil appeals, third supreme judicial district, and here now files its assignment of errors as follows, towit:

I.

The district court erred in its conclusion of law, and in awarding judgment to the plaintiff for the recovery of the balance of the land, to which defendant plead not guilty, and in holding that because the Supreme Court of the United States had judicially determined that Greer county was not, and never had been a part of the State of Texas, and that therefore the act of the legislature of the State of Texas, creating such territory into Greer county as a part of Texas, was beyond the powers conferred upon said legislature by the constitution of the State, and was beyond the power of the people of Texas to incorporate the same into a county of the State of Texas, either by constitution or statute.

II.

The district court further erred in holding, that even if the act of the legislature of Texas, creating Greer county, was not unconstitutional, yet because the act of 1883 only authorized the issuance of such patents to counties in Texas, that this would not include Greer county, and the act granting patents to a county whose territory was entirely beyond the bounds of the State of Texas was unauthorized and beyond the powers of the officers issuing said patents, and that the good faith of the officers in issuing said patents to Greer county would not effect said acts; that the same are void for want of power in the officers to issue the patents.

III.

The district court further erred in its conclusion of law in holding that because the patents for the lands in controversy — not issued

by the legislature, but were issued by the agents and officers of the State of Texas under a general law, authorizing the issuance of such patents to each county of the State of Texas, that this never included Greer county, in that the constitution of Texas only authorized and provided for a division of the territory of Texas into counties by the legislature, and the setting apart of four leagues of land to
33 said county, which in effect limited the power of the legislature in granting such lands to counties of the State of Texas only.

IV.

The court further erred in holding that the patents were void, and that all parties were chargeable with notice of their invalidity.

V.

The judgment of the district court, 26th judicial district, is further erroneous because said judgment in the action of said court is violative of the Constitution in this, that the patents issued by the State of Texas to Greer county prior to 1895, and their acceptance by Greer county constituted a contract between the State of Texas and said Greer county within the meaning of the Constitution of the United States, and the judgment of the court is an impairment of the obligation of said contract so entered into between the State of Texas and Greer county.

Said judgment in the district court is further violative of the Constitution of the United States in that, by means thereof the State of Texas has seized and appropriated the private property of plaintiff in error for public use without just compensation therefor, the title of the lands in controversy having been vested only in plaintiff in error, Greer County, and the judgment of the court in effect invalidates this title and confiscates the property of Greer county to the State of Texas without just compensation.

VI.

The court further erred in rendering judgment for the State of Texas, and in cancelling the patents issued to plaintiff in error Greer County, because although after the decision of the Supreme Court of the United States in 1895, Greer county ceased to be a part of Texas, yet such judgment was in legal effect in so far as the rights of the parties to this litigation is concerned no more than if the territory of Greer county had been voluntarily ceded to the State of Texas by the United States; and if the parties to this litigation acted upon a mistake as to the ownership of Greer county, such mistake
34 was mutual, and relief in equity cannot be based upon a mutual mistake as to how matters may result in the future, honestly made by both parties, with full knowledge of all the facts.

Because of these errors, and others apparent of record, plaintiff in

error prays the court that the judgment of the lower court be reversed, and be here rendered for plaintiff in error.

CLARK & BOLINGER,
H. N. ATKINSON,
Attorneys for Plaintiff in Error.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Assignment of errors. Filed June 11th, 1902. Jas. P. Hart, clerk by D. J. Pickle, deputy.

Bill of Costs.

THE STATE OF TEXAS *vs.* GREER COUNTY ET AL. } No. 16142.

To officers of court, Dr.

Clerk's costs.

	Doll.	Cts.
Docketing suit		.20
Entering appearances		.20
" motion		.15
" orders		4.50
Filing papers		5.25
Entering judgement- (2)		3.30
Issuing copy ints. & commission		3.25
Opening and filing depositions		.20
Approving bonds, (2)		3.00
Transcript		21.35
Addenda to transcript		3.30
35 Assessing damages		.50
Certificate to brief		.50
Transcript		21.00
Filing and certifying brief		.90
Taxing costs		.25
Total clerk's costs	$	67.85

Sheriff's & miscellaneous costs.

J. M. Davis, sheriff:

Venire fee		.50
Citation in error & mileage		1.00

J. B. Mobley, district clerk Lubbock county:

Court costs		32.60
Depositions estimated at		7.50
Total sheriff's & miscellaneous costs	$	41.60

Recapitulation.

Clerk's costs	$67.80
Sheriff's & micellaneous costs	41.60
Total	$109.45
Less amount deposited July 8, 1901, by Cameron heirs	33.95
Balance	$75.50

36 *Clerk's Certificate.*

THE STATE OF TEXAS, }
County of Travis. }

I, Jas. P. Hart, clerk of the district court within and for the county and State aforesaid, do hereby certify that the within and foregoing on 41 pages is a true and correct transcript of all the proceedings had in this court in cause No. 16,142, of The State of Texas *vs.* Greer County *et al.*, as the same appear of record and on file in this office.

Given under my hand and seal of office, at Austin, Texas, this the 25th day of June, A. D. 1902.

[SEAL.] JAS. P. HART,
Clerk District Court, Travis County, Texas.

(Endorsed:) No. 2901. Assignment. Greer county, plaintiff in error *vs.* The State of Texas, defendant in error. From the district court of Travis county, for the 26th judicial district of Texas. Applied for by H. N. Atkinson, attorney for plaintiff in error, on the 27th day of June, A. D. 1902, and delivered to the above named attorney on the 27th day of June, A. D. 1902. Jas. P. Hart, clerk of the district court of Travis county. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Jul- 5. 1902. R. H. Connerly, clerk.

37 *Opinion of the Court of Civil Appeals.*

Delivered January 14th, 1903.

GREER COUNTY, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 2901.

Error from the district court of Travis county.

This is a suit by the State to recover from Greer county, in Oklahoma Territory, four leagues of land; and from a judgment in favor of the State, Greer county has appealed. The case was submitted

in the court below and is also submitted here on the following agreed facts:

1. The land sued for comprises four leagues in Hockley and Cochran counties, and was granted to Greer county as an organized county of the State of Texas, under the provisions of the general laws of the State, granting four leagues of land to each county of the State for school purposes.

2. Patents, (five in number) issued to Greer county July 18th, 1887; being Nos. 519, 520, 521, 522 and 523, vol. 24. The original or certified copies of such patents may be introduced in evidence by either party and for any purpose deemed advisable.

3. 7,236 acres of said land *is* now claimed by Greer county, Oklahoma Territory, under and by virtue of said patents to Greer county, Texas. Said 7,236 acres *is* described as follows: 7,236 acres of land off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres, and the balance of said 7,236 acres off the north side of
38 league No. 87, as follows: Beginning at the N. E. corner of said league 87; thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning; situated in Hockley and Cochran counties, Texas.

4. The balance of said four leagues is claimed by the heirs and devisees of Wm. Cameron, deceased under and by virtue of a certain deed of conveyance thereof to Wm. Cameron from Strain & Swinburne, dated January 17, 1888. Strain & Swinburne claimed title thereto under and by virtue of a deed of conveyance to them from and on the part of Greer county, Texas, by the county judge of said Greer county, Texas, dated January 12, 1888. The land referred to is described as follows: 10,476 acres of land off of the south end of the Greer County school land leagues as follows: Beginning at the S. E. corner of that portion of league No. 85, which is patented to Greer county by patent No. 520, vol. 24; thence N. at 2329½ varas, the N. E. corner of said league No. 85; at 7,329½ varas the N. E. corner of league No. 86; at 11,829 45-100 varas, a point on the east line of league No. 87; thence W. 5000 varas; thence south 11,829 45-100 varas; thence east 5000 varas to the place of beginning, so as to include all that part of league No. 85 that is patented to Greer county, all of league No. 86, and the balance of the 11,476 acres out of the south side of league No. 87, situated in Hockley and Cochran counties, Texas.

5. The defendant Greer County is now an organized county of Oklahoma Territory, one of the Territories of the United States, and comprises the same territory which was at one time organized under the laws of the State of Texas as Greer county, Texas, to which the aforesaid four leagues of land were patented.

6. Wm. Cameron, the grantee in the above described deed of conveyance, died testate on the 6th day of February, 1898. By the

terms of his will, which was duly probated in the probate court of McLennan county, Texas, the other defendants were made executors of his will and devices of his estate, and are also his heirs at law, as set out in plaintiff's amended petition, and as such they claim title to the aforesaid land.

7. The territory now organized as Greer county, Oklahoma
39 Territory, was, up to the date hereinafter set out, claimed by the State of Texas to be a part of her territory, and up to said date jurisdiction and control was claimed and exercised over the same by the State of Texas. The Government of the United States did not, except in so far as was done by the act making Greer county a part of the northern judicial district of Texas, as herein after shown, concede said claim, but during all of said time claimed said territory as a portion of her own territory, outside of the limits of the State of Texas, and the legislative and executive departments of the said State had full knowledge of said claim prior to the issuance of the patents mentioned herein. Attempts were made from time to time to settle the dispute between the State of Texas and the United States, as to the ownership of this territory, without success.

8. Greer county, comprising the aforesaid territory, was created by the legislature of the State of Texas by the act of February 8th, 1860, and was organized as a county under the provisions of said act on the — day ——, A. D., 1886.

9. By an act of the Congress of the United States of May 2nd, 1890, the Attorney General of the United States was directed to commence, in the name and on behalf of the United States, and prosecute to a final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of lands lying between the North and South forks of Red river, where the Indian Territory and the State of Texas adjoin, east of the 100th degree of longitude, and claimed by the State of Texas as within its boundary and a part of its land and designated on its maps as Greer county.

Under the authority of this act, a suit was instituted in the Supreme Court of the United States, styled The United States *vs.* The State of Texas, in which the State of Texas appeared by her attorney general and other counsel.

10. At the October term, 1895, a decree was rendered in said cause as follows:

40 "This cause having been submitted upon the pleadings, proofs, and exhibits and the court being fully advised, it is ordered, adjudged and decreed that the territory east of the 100th meridian of longitude, west and south of the river now known as the North fork of Red river, and north of a line following westward, as prescribed by the treaty of 1819 between the United States and Spain, the course and along the south bank both of Red river and of the river now known as the Prairie Dog Town fork or South fork of Red river, until such line meets the 100th meridian of lon-

gitude,—which territory is sometimes called Greer county,—constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits, nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America. Each party will pay its own costs."

After this decree was rendered, the State of Texas exercised no further control or jurisdiction of said territory, and the same was afterwards organized into Greer county, Oklahoma Territory, and as a part of said Territory. The territory described in said decree is the same as was embraced in Greer county, Texas, as created and organized as aforesaid.

The recitals in the report of said cause of United States *vs.* Texas, as reported in the 162 volume of the United States Supreme Court Reports and the printed record in said cause, may be used as full evidence of the facts therein stated, as to the institution of the suit, the appearance and pleadings of the parties and the decree of the court, without the necessity of producing certified copies thereof from the records of said court.

In addition to the foregoing the trial judge made a finding of fact to the effect that the patents referred to for the four leagues of land purport on their faces to have been issued by virtue of an act of the legislature of the State of Texas, approved April 7, 1883. (Chapter 55 Gen. Laws 1883.)

41 *Opinion.*

In addition to the usual averments in trespass to try title, the State averred in its petition that the defendant claimed title to the land by virtue of the patents issued by the governor of Texas July 18, 1887, to Greer county, Texas, comprising the same territory as is embraced in the defendant Greer County, Oklahoma Territory; that the patents were issued without legal authority, and prayed that the same be cancelled and held for naught. The Supreme Court of the United States in the case referred to in the agreed statement, decided that the territory embraced in what was originally considered and treated by the legislature and other officers of Texas as a part of the State, was in fact within the Territory of Oklahoma, and was no part of the State of Texas. This being true, if it be conceded that the patents issued by the governor of Texas vested title in a *de facto* county, and that the defendant in this case (Greer County, a political division of Oklahoma Territory) has succeeded to the legal title granted by the patents, still, as the lands referred to were granted for public school purposes, and were held in trust by Greer county for such purposes, and as Greer county will not and cannot use them for such purposes within the limits of Texas, we are of the opinion that the State was entitled to have the patents cancelled, and recover the land. This case is distinguishable from Cameron's Executors *vs.* State, 68 S. W., 508. The land involved in that case had been

sold by Greer county; and, as between the State and the vendees of the county, it was held by the Supreme Court that the patents vested title in Greer county, and that Greer county had the power to convey the land to the purchasers. But the court did not hold that if the land in that case had not been sold by the county, and it had become impossible for the county to execute the trust, the State could not recover the trust fund.

We find no error in the record, and the judgment is affirmed.

Affirmed.

W. M. KEY,
Associate Justice.

Filed 1–14–03.

42 (Endorsed): No. 2901. Greer County, plaintiff in error *vs.* The State of Texas, defendant in error. Error from Travis county. Opinion. Affirmed. Key, associate justice. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Jan. 14, 1903. R. H. Connerly, clerk.

Judgment of Court of Civil Appeals.

Rendered January 14, 1903.

GREER COUNTY *vs.* STATE OF TEXAS. } No. 2901.

Error from district court of Travis county.

Opinion by Associate Justice Key.

This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the court that there was no error in the judgment: It is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the plaintiff in error, Greer County, of the Territory of Oklahoma, principal, and its sureties, H. N. Atkinson, Geo. Clark and D. C. Bolinger, pay all costs in this behalf expended, and this decision be certified below for observance.

Motion for Rehearing in Court of Civil Appeals.

Filed January 29th, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District, at Austin.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error. } No. 2901.

43 Now in the above entitled and numbered cause comes plaintiff in error and moves the court to set aside the judgment heretofore rendered in this cause and grant it a rehearing for the following reasons, to-wit:

1st. The court erred in holding by its judgment that the title to this property never vested in Greer county, when at the time the patent to the land in controversy was issued, Greer county was a *de facto* part of the State of Texas and was so considered by the people of Texas, and the framers of its constitution and when the State of Texas, by its constitution and laws, had absolutely vested the title to these lands in said Greer county, Texas.

2nd. The court erred in its judgment in awarding the lands in controversy to the State of Texas as against Greer county, for the reason that the undisputed evidence showed that the State of Texas, through its officers, at the time said lands were granted to Greer county, was fully aware that a controversy existed between the United States and State of Texas, as to the ownership of Greer county and with full knowledge of said controversy, said patents were issued to said Greer county, Texas; and said State under the law was not and is not authorized to recover lands granted under those circumstances.

3rd. The court erred in affirming the judgment of the district court of Travis county, for the reason that the judgment of said district court and of this court was a violative of the Constitution of the United States of America in this: that the same impairs the obligation of the contracts as evidenced by the patents issued in this cause.

Said judgments are further in violation of the Constitution of the United States in this: that their effect is to take the property of said Greer county for public use without making compensation therefor.

4th. Said court further erred in awarding said lands to plaintiff because under the law the effect of the judgment of the Supreme Court of the United States was the same as though Greer county, Texas, had been ceded to the United States, and the effect of such
44 cession would not be to deprive said Greer county of its property, which it heretofore legally acquired.

Wherefore, plaintiff in error prays that it be granted a rehearing and that said judgment of the district court be here reversed and rendered for plaintiff in error.

CLARK & BOLINGER,
H. N. ATKINSON,
Att'ys for Pl'ff in Error.

(Endorsed:) With app. No. 3692. No. 2901. No. 1550. Greer County, pl'ff in error *vs.* The State of Texas, def't in error. Motion for rehearing. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas. Jan. 29, 1903. R. H. Connerly, clerk. Filed in supreme court Mar. 9, 1903, F. T. Connerly, clerk.

Order of Court of Civil Appeals Submitting Motion for Rehearing.

Made February 4th, 1903.

Motion 1550. No. 2901. Greer County *vs.* State of Texas. Error from Travis county. Motion for a rehearing. Submitted.

Order of Court of Civil Appeals Overruling Motion for Rehearing.

Made February 18th, 1903.

Motion 1550. No. 2901. Greer County *vs.* State of Texas. Error from Travis county; Motion for a rehearing. The motion is overruled.

45 *Application for Writ of Error.*

In Supreme Court of the State of Texas.

Filed March 7th, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District.

GREER COUNTY, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 1550.

Error from the district court of Travis county, Texas.

To the honorable supreme court of the State of Texas:

Your petitioner, Greer County, a municipal corporation, and subdivision of the Territory of Oklahoma, and formerly an organized

county and municipal sub-division of the State of Texas, comes and appeals to this court for a writ of error, and showeth as follows:

I.

That heretofore, towit, on the — day of ——, 1900, The State of Texas instituted a suit in Cochran county, Texas, as plaintiff, against Greer County and certain other defendants, as defendants, praying for cancellation of certain patents issued by the State of Texas to Greer county on July 18, 1887, which lands are described in detail in plaintiff's second amended original petition, filed in the district court of Travis county, after change of venue, by agreement from the county of original jurisdiction to that county. There was a severance as to some of the defendants, who were the heirs of Wm. Cameron, deceased, and their rights and interests have been
46 already disposed of by this court. That part of the cause affecting plaintiff in error, and involving seven thousand, two hundred and thirty six acres of land, was tried in the district court of Travis county, on the 29th of April, 1901, and resulted in a judgment in favor of the State cancelling said patents. (R. p. 27-29.)

Appeal was prosecuted to the court of civil appeals, third supreme judicial district, and on the — day of ——, said judgment was affirmed by said court of civil appeals, and within the time limited by law, plaintiff in error filed its motion for rehearing on towit, January 29th, 1903, and on towit, the 18th day of February, 1903, said motion for rehearing was overruled. The cause involves the title to over 7000 acres of land, situated in Cochran and Hockley counties, State of Texas, and plaintiff in error now prosecutes error to this court, and prays for a writ of error upon the grounds set up in its motion for rehearing, as follows:

First Assignment of Error.

"The court of civil appeals erred in holding by its judgment that the title to this property never vested in Greer county, when at the time the patent to the land was issued Greer county was *de facto* a part of the State of Texas, and was so considered by the people of Texas, and the framers of its constitution, and when the State of Texas, by its constitution and laws had absolutely vested the title of these lands in said Greer county."

Proposition.

At the time of the grant evidenced by the patents in this case by the State of Texas to Greer county, said county was a municipal sub-division of the State of Texas, and even if not *de jure*, such county was certainly *de facto* a part of the State of Texas, and said

State of Texas had, for many years, claimed and exercised dominion and jurisdiction over the same; and the grant by the State of Texas of the land to said county, under the laws of the State of Texas, vested complete title in Greer county, which title,
47 so vested, was beyond the reach and recall of the State of Texas through any department of its government, executive, legislative or judicial.

Statement.

The various laws under which Texas asserted and exercised jurisdiction and dominion over Greer county, as a sub-division of the State, are set forth in brief of plaintiff in error in the court of civil appeals, (p. 6–8) and many other laws could be cited running from 1836.

The agreed statement of facts sets forth that these four leagues of land were granted to Greer county, as an organized county of the State of Texas. (R. p. 21) Patents were issued to Greer county on July 18th, 1897. (R. p. 22)

The territory organized as Greer county, Oklahoma, was, up to October, 1895, claimed by the State of Texas to be a part of her territory, and up to said date the said State exercised jurisdiction and control over Greer county. (R. p. 23, 25.)

Authorities.

Heirs of Wm. Cameron *vs.* The State, 63 S. W., 508.
Day Co. *vs.* State, 68 Tex., 539.
Phillips *vs.* Payne, 92 U. S., 130.
Texas *vs.* White, 7 Wallace, 700,

and other authorities cited on p. 4 of brief of plaintiff in error in the court of civil appeals.

As to change of government, see:
U. S. *vs.* Roselins, 15 How. 36.
Dent *vs.* Emmeger, 14 Wall. 308.

"Perfect titles before cession continue so afterwards, even though the treaty should not so provide, and this rule applies to municipal corporations as to individuals."
Townsend *vs.* Greely, 5 Wall. 326.

As to patents vesting full title in Greer county,
Constitution of Texas, art. VII. sec. 6.

48 *Remarks.*

The title having vested in Greer county, the question naturally arises, Has the grantor the right, even by judicial action, to revoke

it? The case is similar to cession or conquest of the country, and is settled by many Texas authorities that this does not affectthe rights of property in any land.

Hardy *vs.* De Leon, 5 Tex., 234,
Musquis *vs.* Blake, 24 Tex., 466,
Kirkpatrick *vs.* Sisneros, 23 Tex., 124,
Maxey *vs.* O'Conner, 23 Tex., 242.

Patents to Greer county were issued in pursuance of law, and were therefore valid at the time of their issuance. The constitution provided in 1876, at the time of its adoption, and now provides that all lands thereafter granted to the several counties of the State for educational purposes, right of property and the title thereto was vested in said counties; and full discretion was given to the commissioners' court of each county to administer those lands as they saw proper, without consulting the State, in any of its departments, with reference thereto; in other words, complete ownership was vested in the counties. These lands became the private property of Greer county, by the terms of the grant, and the State constitution and it is elementary that the rights of private property are neither affected either by cession or by conquest, or otherwise.

U. S. *vs.* Percheman, 7 Pet. 51.
Stracher *vs.* Lucas, 12 Pet. 410.
Airhart *vs.* Massieu, 98 U. S., 491.

This latter authority holds that the division of a country does not divest rights that either may have to property situated in the other. As far as the ownership of these lands *are* concerned, Greer county must be treated as an individual in every sense of the word. The title was in Greer county by act of the State of Texas. The property, by virtue of the grant, became private property of Greer county
49 and no subsequent occurrence, whereby jurisdiction of the State was lost over Greer county, can authorize or justify the State in its attempt to retract this grant which had become executed by the State's own act, and under the State's own laws.

Second Assignment of Error.

The court of civil appeals erred in its judgment in affirming the judgment of the district court, and in awarding the land in controversy to the State of Texas, and cancelling the patents, for the reason that the undisputed evidence showed that the State of Texas, through its officers, at the time said lands were granted to Greer county, was fully aware of the controversy then existing between the United States of America and the State of Texas as to ownership of Greer county, and with full knowledge of said controversy said patents were issued to said Greer county, and the State, under the rules of law and equity, was not authorized to recover back land granted under such circumstances.

Proposition.

Where the means of inquiry or knowledge are equally open to both parties, if a mistake occurs without fraud or falsehood, neither party is entitled to relief.

Statement.

The contest as to the ownership of Greer county was known to the legislative and executive departments of the State government certainly for the year 1860 up to the date of the grant of the patents in 1887. (R. p. 17)

Authorities.

Railway Co. *vs.* Van Alstyne, 56 Tex., 448–9,
Galveston county *vs.* Gorham, 49 Tex., 303,
Gilliam *vs.* Alford, 69 Tex., 271.

Indeed, the proposition may be stated more strongly thus:
Where the facts are equally unknown to both parties, or when they have equal information or means of knowledge, or where the facts are doubtful from its own nature, if the parties act in good faith, a court of equity will not interfere.

Adams. Eq. (7 ed.) 166 *et seq.* and notes
50 For b. Eq. (116) and notes
Farnsworth *vs.* Duffner, 142 U. S. 43,
Baltzer *vs.* Rwy. Co. 115 U. S., 634,
May *vs.* Le Claire, 11 Wall. 217,
Juzan *vs.* Toulmin, 9 Ala., 662.
Wilson *vs.* Western Rwy. 77 N. C., 445.
Dambman *vs.* Schiestery, 75 N. Y., 55.
Webster *vs.* Stark, 10 Lea (Tenn.) 406,
Hill *vs.* Bush, 17 Ark., 522,
McCobb *vs.* Richardson, 24 Me., 82.
Belt *vs.* Wehan, 2 Cal., 150.
Pomeroy Eq., sec. 843.

Remarks.

This court has held that when the State enters her courts as a suitor, the same law applies to it as to a citizen.
92 Tex., 80.

This being the case, the same principles which would conclude a private litigant, must conclude the State; and there being no charge of fraud or dishonesty, either on the part of Greer county, which as a municipal corporation has stood helpless between the contending

sovereignties, and the State having acted with full knowledge of the facts, as well stated by the authority last quoted (Pomeroy), equity will not grant relief at suit of either party, and the State cannot obtain relief, merely because all her departments of government have erred in their judgment.

The other authorities cited are equally as strong, or perhaps, stronger, and these authorities are established as the law of this court by the cases cited. This being the case, the State cannot go into her own courts and arbitrarily revoke a grant which she made with her eyes open, and when the other party has been, in no manner, at fault.

III.

The third assignment of error is as follows:

"The court of civil appeals erred in affirming the judg-
51 ment of the district court for the reason that said judgment constituted an act on the part of the State of Texas violative of the Constitution of the United States in this, that said judgment and said action on the part of the State impaired the obligation of the contract between the State of Texas and Greer county, both parties being able and willing to contract, and having contracted. And said judgments of the district court and the court of civil appeals constitute in fact a further violation of the Constitution of the United States, the taking of the property of Greer county for public use without just compensation therefor."

The above assignment is submitted as a proposition.

Authorities.

Fletcher *vs.* Peck, 6 Cranch *pp.* 87.
Durst *vs.* Daughtry, 81 Tex., 650.

The authorities could be multiplied *ad infinitum*, but the principle is so established that it is not necessary in this court. The inhibition extends to all departments of the State government, executive, legislative and judicial; and wherever the State attempts to act through either of these departments, and by said act impinges upon the constitutional inhibition, its act is null.

In the case at bar here is an executed grant, which all authorities hold is a contract. The State of Texas had legal capacity to make the grant; the county of Greer had legal capacity to take the grant; the grant was made by the State and accepted by Greer county, and thereby became fully and finally executed. Being a contract between the State and Greer county, and the obligation assumed by the State in this transaction being that the State contracted and agreed to finally part with its title to the lands granted, and Greer county having accepted the grant and assumed full ownership of the lands, when it was thoroughly *sui juris*, this

proceeding on the part of the State, through her own courts, cannot be construed otherwise, not only an impairment but as a positive annullment, and a disregard of the obligation of its contract.

52 Suppose the State had made a grant to an individual, a citizen of Texas, and the individual is subsequently removed from the State, or has been banished from the State, could the State in that event, cancel its grant because of a mistake? Here Greer county has not forfeited any right by any act on her part. After the consummation and execution of the grant, and at all other times, Greer county, as a municipal subdivision, has perforce remained quite powerless to say or do any word or act which could influence the final result. Then her extinguishment by the decree of the Supreme Court of the United States as a constituent part of Texas, destroys her rights of property honorably acquired by the bounty of the State through her constitution previous to such extinguishment. That is the question in the case. She has died, as it were, and ceased to be a municipal sub-division of the State of Texas, but has been resurrected as a municipal sub-division of the Territory of Oklahoma, was recognized in this suit with the same boundaries, same inhabitants, and with the same rights of property. This being the case, the judgment of the court of civil appeals, as well as the district court, are manifestly violative of the constitution of the United States, in that it is a palpable attempt on the part of the State to violate its own contract.

IV.

The fourth assignment of error is as follows:—

"The court of civil appeals further erred in cancelling the patents to said land, and awarding said land to the State because under the law, the effect of the judgment of the Supreme Court of the United States was the same as though Greer county, Texas, had been ceded to the United States, and the fact of such cession could not, in law, deprive Greer county of its property, which before that it had legaliy acquired."

This assignment of error has been treated in the proposition under the first assignment of error, and need not be repeated, but he same is insisted upon.

53 ## V.

Applicant therefore comes and prays the court for a writ of error in terms of law, directed to the court of civil appeals, third supreme judicial district, requiring said court to transmit to this court the record, and all other papers prescribed by law, and by the rules to this court; and that upon hearing of said writ of error it may please this court to vacate and set aside the judgment of said court of civil appeals, as well as the judgment of the district court of Travis

county, and here render judgment in favor of plaintiff in error, and that The State of Texas, defendant in error, take nothing by its suit.

H. N. ATKINSON,
CLARK & BOLINGER,
Counsel for Plaintiff in Error.

(Endorsed:) App. No. 3692. Greer County *vs.* The State of Texas. Application for writ of error. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Mar. 7, 1903. R. H. Connerly, clerk. Filed in supreme court Mar. 9, 1903. F. T. Connerly, clerk. Refused.

Clerk's Office, Supreme Court.

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above and foregoing eight pages contain a true and correct copy of the original petition for writ of error in application No. 3692, Greer County, applicant, *vs.* The State of Texas, which said application for writ of error was refused by the supreme court of Texas on the 12th day of March, A. D. 1903.

Witness my hand and the seal of said court at the city of Austin, this the 4th day of December, A. D. 1903.

[SEAL.] F. T. CONNERLY, *Clerk.*

(Endorsed:) Appl. No. 3692. Greer County *vs.* State of Texas. Certified copy of petition for writ of error. Fee $4.80. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

54 *Judgment of the Supreme Court of Texas.*

Rendered March 12th, 1903.

In Supreme Court of Texas, Third District.

GREER COUNTY
vs.
THE STATE OF TEXAS.

MARCH 12TH, 1903.

This day came on to be heard the application of Greer County for a writ of error to the court of civil appeals for the third district, and the same having been duly considered, it is ordered that said application be refused; that the applicant, Greer County and its sureties, H. N. Atkinson, Geo. Clark and D. C. Bolinger pay all costs incurred on this application.

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court on said application for a writ of error.

Witness my hand and the seal of said court, this the 28th day of March, A. D. 1903.

[SEAL.]

F. T. CONNERLY, *Clerk*,
By J. S. MYRICK, *Deputy*.

(Endorsed:) Application No. 3692. Greer County *vs.* The State of Texas. Copy of judgment in supreme court. Application for writ of error refused. Filed in court of civil appeals, third district, Austin, Texas, March 28th, 1903, R. H. Connerly, clerk.

55 *Bill of Costs, Supreme Court of Texas.*

Filed March 28th, 1903.

Clerk's Office, Supreme Court.

GREER COUNTY *vs.* THE STATE OF TEXAS. } No. 3692. Certified Copy Bill of Costs, Supreme Court.

Filing application	.50
Docketing petition	.50
Entering appearance of counsel	.50
Filing two briefs	.60
Filing three papers	.90
Entering orders	.50
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Total	$7.00

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and seal of said court at Austin, this the 28th day of March, 1903.

[SEAL.]

F. T. CONNERLY, *Clerk*.

(Endorsed:) Application No. 3692. Certified copy bill of costs in supreme court, Austin. Greer County *vs.* The State of Texas. $7.00. Filed in court of civil appeals, third supreme judicial district, Austin, Texas. Mar. 28, 1903. R. H. Connerly, clerk.

56 *Petition for Writ of Error to the Supreme Court of the United States.*

Filed December 4th, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

To the honorable the Supreme Court of the United States:

Your petitioner in error, Greer County, a part of the Territory of Oklahoma, comes and shows to the court that on towit: the — day of January, A. D. 1903, a judgment was rendered in the above entitled cause in favor of the State of Texas, and against your petitioner in error, whereby a judgment of the trial court in said cause was affirmed, which latter judgment in effect canceled certain patents long before issued by the State of Texas to plaintiff in error, for lands for school purposes.

Plaintiff in error would further show that after the affirmance of said judgment by said court of civil appeals, plaintiff in error, in accordance with the law and rules of practice which obtain in the State of Texas, did file its application to the supreme court of said State, for a writ of error to revise said judgment of the court of civil appeals, and that on towit: the 12th day of March, 1903, said application for a writ of error was refused by said supreme court of Texas, leaving the judgment of said court of civil appeals to
57 stand as the final judgment in said cause, and from which no further appeal could be prosecuted.

Your petitioner avers that in the record and proceedings, as also in the rendition of the judgment aforesaid by the highest court of said State of Texas, in which a decision could be had in the said suit, there was drawn in question the validity of an authority exercised under said State, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of such authority. Plaintiff in error believes that thereby a manifest error hath happened, to the great damage of said Greer County, and it prays the court for a writ of error, directed to said court of civil appeals of the third supreme judical district of the State of Texas, in terms of law, in order that said error, if any, may be corrected, and what of right and according to the laws and customs of the United States should be done.

GEORGE CLARK,
D. C. BOLINGER,
H. N. ATKINSON,
Attorneys for Plaintiff in Error.

(Endorsed:) Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeal of the third supreme judicial district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court of civil appeals of the third supreme judicial district of Texas, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Greer County, Oklahoma Territory, and the State of Texas, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Greer County, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the filing of this writ, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
59 of the said Supreme Court, the 4th day of December, in the year of our Lord one thousand nine hundred and three.

[The Seal of the U. S. District Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk U. S. Circuit Court, Western District Texas,
By J. W. HANCOCK, *Deputy.*

Allowed by
H. C. FISHER,
Chief Justice Court Civil Appeals,
3d Supreme Judicial District, State of Texas.

Filed in court of civil appeals, 3rd supreme judicial district o Texas, this the 4th day of December, A. D. 1903.

R. H. CONNERLY, *Clerk.*

60 *Supersedeas Bond.*

Filed December 4, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District o Texas.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

Know all men by these presents: that we, Greer County, Okla homa Territory, as principals, and Geo. Clark and H. N. Atkinso and D. C. Bolinger, as sureties, are held and firmly bound under th State of Texas in the sum of two hundred and fifty dollars to be pai to the said State of Texas, and for the payment of which well an truly to be made, we bind ourselves and each of us, our heirs, exec utors, and administrators, jointly and severally and firmly by thes presents.

Signed, seal- and dated, this the 3rd day of Dec. in the year of ou Lord one thousand nine hundred and three.

The condition of the above obligation is such that whereas th above named Greer County has obtained a writ of error to the Su preme Court of the United States to reverse the judgment rendere in the above entitled cause by the said court of civil appeals of th third supreme judicial district of Texas.

Now if the above named Greer County shall prosecute said writ o error to effect and answer all damages and costs if it fails to mak said writ of error good, then this obligation should be void, other wise to remain in full force and effect.

Approved as a supersedeas bond, this the 4th day of Dec. 1903.

GREER COUNTY,
By its attorneys, CLARK & BOLINGER. [L. S.]
GEO. CLARK. [L. S.]
H. N. ATKINSON. [L. S.]
D. C. BOLINGER. [L. S.]

Approved as a supersedeas bond, this the 4th day of Dec. 1903.

H. C. FISHER,
Chief Justice Court Civil Appeals,
Third Supreme Judicial District of Texas.

(Endorsed :) Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

61 In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

In the above entitled cause The State of Texas, defendant in error hereby accepts service of citation and waives the issuance and service thereof and consents to enter its appearance in the Supreme Court of the United States as if duly served with process.

This the 4th day of Dec., 1903.

C. K. BELL,
General Attorney of Texas.

Filed in court of civil appeals, 3rd supreme judicial district of Texas this the 4th day of December A. D. 1903.

R. H. CONNERLY, *Clerk.*

62 *Assignments of Error.*

Filed December 4th, 1903.

In the Supreme Court of the United States.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

In error to the court of civil appeals of the third supreme judicial district of the State of Texas.

In the above numbered and entitled cause comes Greer County, plaintiff in error, and here now complaining of the action and judgment of the court of civil appeals, aforesaid, assigns the following errors:

I.

The court of civil appeals erred in holding by its judgment that the title to the property in issue never vested in Greer county, because at the time the patent to the land in controversy was issued by the express direction and authority of the political departments of the State of Texas, Greer county was *de facto* a part of the State of Texas, and was so considered by the State of Texas, and the framers of its constitution, and the State of Texas, under its constitution and laws, had vested title absolute to said land in said Greer county.

II.

The court of civil appeals of Texas further erred in its judgment in awarding the lands in controversy to the State of Texas, and in canceling the patents to Greer county, for the reason that the undisputed evidence demonstrated that the State of Texas, at the time said lands were granted to Greer county was fully aware
63 that a controversy existed between the United States and the State of Texas, as to the ownership of Greer county, and with full knowledge of said controversy, said patents were issued to said Greer county, and the title to said lands thereby vested in Greer county; and the State of Texas, under the law and rules of equity, was not authorized to recover the lands so granted, and cancel the titles thereto, under the excuse and pretext that a mistake was made by said State, as to the ownership of Greer county.

III.

The court of civil appeals of Texas further erred in affirming the judgment of the district court of Travis county, and canceling the patents to said lands, because such action was a violation by the State of the Constitution of the United States of America, in that it impaired the obligation of the contracts evidenced by said patents, and consummated between the State of Texas and Greer county, by the issuance by the State and acceptance by the county of said patents and the grants of lands conveyed thereby.

IV.

The judgments of the district court of Travis county and of the court of civil appeals, aforesaid, are further violative of the Constitution of the United States, in that the effect of said judgments was and is to take the property of Greer county for public use, without making just compensation therefor.

V.

The court of civil appeals of Texas further erred in affirming the judgment of the district court of Travis county canceling the patents to Greer county, and awarding said lands to the State of Texas, because the effect of the judgment of the Supreme Court of the United States in deciding that Greer county was not a part of Texas, was, in effect, the same as though said county had been ceeded by treaty to the United States; and the effect of such
64 cession or of such decision, could not deprive Greer county of its property theretofore legally acquired.

GEORGE CLARK,
D. C. BOLINGER,
H. N. ATKINSON,
Attorneys for Plaintiff in Error.

(Endorsed:) Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

Bill of Costs.

Court of Civil Appeals, 3rd District.

Filing record		$ .50
Docketing cause		.50
Appearances		1.00
Filing briefs		1.00
Filing and entering motion		.35
Orders		2.00
Filing 18 extra papers		1.80
Judgment		1.00
Taxing costs and copy		.50
Mandate		1.50
Recording opinion		3.00
Certified copy bill of costs		.75
Clerk's costs, sup. ct		7.00
Certified copy orders to sup. ct		2.00
Notices		6.00
	Copy of motion	2.00
65	Issuing 1 precept	1.00
	Sheriff's fees	2.00
Copy of petition for writ of error		4.80
Costs of U. S. circuit court		2.00
Transcript fee, court of civil appeals		33.50
Total		$74.20

THE STATE OF TEXAS:

I, R. H. Connerly, clerk of the court of civil appeals in and for the third supreme judicial district of Texas, hereby certify that the foregoing pages, numbered from 1 to 65, both inclusive, contain a true and correct copy of the original transcript of the record from the district court of Travis county, Texas; all orders, judgment and opinion of said court of civil appeals; copy of plaintiff in error's motion for rehearing; and copy of certified copies of orders and bill of costs of the supreme court of Texas; copy of bond and assignment of errors to the Supreme Court of the United States; original writ of error and acceptance of service and certified copy of application for writ of error to the supreme court of Texas, and of petition for writ of error to the Supreme Court of the United States in the case of Greer County, plaintiff in error *vs.* The State of Texas, defendant in error, as the same now appear on file and of record in the office of the said

clerk of the court of the civil appeals for the third supreme judicial district of Texas.

In testimony whereof, I have hereunto set my hand and annexed the seal of said court of civil appeals, 3rd district, at Austin, Texas, this the 15th day of December, 1903.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY,
Clerk Court of Civil Appeals,
3rd Supreme Judicial District of Texas.

Endorsed on cover: File No. 19,171. Texas court of civil appeals, 3rd supreme judicial district. Term No. 160. Greer County, Oklahoma Territory, plaintiff in error, *vs.* The State of Texas. Filed December 21st, 1903. File No. 19,171.